

DISCUSSION OF THE AMENDMENT

Claims 1-31 are active in the present application. Previously presented Claims 5 and 11-12 are amended for matters of form and clarity. Support for the amendment is found in the original claims and the previously presented claims. Claims 26-31 are new claims. Support for new claims 26-29 is found in the examples of the present specification and in the original claims. Support for new claims 30 and 31 is found on page 13 last paragraph.

No new matter is added.

REMARKS

Applicants thank the Examiner Michele Jacobson and the Examiner's supervisor Carol Chaney for the helpful and courteous discussion of May 28, 2008. During the discussion Applicants' U.S. representative pointed out that the specification as originally filed included evidence demonstrating that the tubular film of the present claims is superior to tubular films which fail to include a polyolefin layer as an inner layer.

The Amendment filed in the present case on May 14, 2008 included arguments that the original specification included comparative and inventive examples showing the superiority of the presently claimed invention. Applicants discussed the data of the original specification on pages 11 and 12 of the May 14 Amendment. The Amendment pointed out that the examples of the present specification provide a comparison of the film of the presently claimed invention with the film of the cited art (i.e., Grund- US 5,612,104). On page 7, paragraph No. 3 of the July 7 Office Action, the Office stated:

Applicants have asserted that the patentability of this invention hinges upon its superior resistance to puncture by bony meat products, but no evidence has been presented comparing the resistance to puncture of the instant invention to the invention of Grund.

Applicants submit that the Office's assertion in paragraph No. 3 on page 7 of the July 7 Office Action is not quite correct. Applicants have in fact provided a comparison of a film very similar to Grund, e.g., a five-layer film having polyamide inside and outside layers, with the film of the present claims with the inside polyamide layer modified to have the necessary sealability. This comparison is shown by Example 2 on pages 10-11 of the specification and Comparative Example 1 on pages 11-12 of the specification. The inventive example, i.e., Example 2, is a five-layer film including an outer layer of polyamide, an intermediate layer of a modified polyethylene, a core layer of a polyethylene, an intermediate layer of a modified polyethylene, and an inner layer of a modified polyethylene. Comparative Example 1 has the

identical outer, core and intermediate layers but replaces the inner layer with a polyamide layer. Comparative Example 1 on pages 11 and 12 of the specification has, in principle, the same layer structure of Grund; namely, as pointed out by the Office, “Grund teaches a five-layer film comprising a first and fifth layer of polyamide, a third core layer of polyolefin and a second and a fourth adhesive layer between the polyolefin core layer and the polyamide layers” (see page 3, paragraph No. 3 first sentence of the July 7 Office Action).

Inventive Example 2 of the present specification is shown to have a damaging energy of 720 mJ and a relative damaging energy of 10.3 J/mm (see page 11 of the specification). In contrast, Comparative Example 1 which has the layer structure asserted by the Office to be disclosed by Grund, is shown to have a damaging energy of 630 mJ and a relative damaging energy of 9.0 J/mm (see page 12 of the specification). Applicants have thus shown that the tubular film of the presently claimed invention is significantly superior to the Grund tubular film. As shown by Applicants, there is a substantial difference between a tubular film having an inner polyolefin layer in comparison to a tubular film having an inner polyamide layer.

Applicants submit herewith a Declaration of Dr Hartmut Grund According to Dr Grund, those of skill in the art would not have expected that significantly improved damaging energy can be obtained by replacing a polyamide layer with a polyolefin layer in the manner recited in the present claims. To the contrary, those of ordinary skill in the art would have expected exactly the opposite; namely, that the inclusion of a polyamide film would lead to improve damaging energy as shown by the stress-strain curves for Nylon 6 and an LDPE polyolefin film.

Applicants have shown that replacing an inner polyamide layer with a polyolefin layer provides a packaging film having substantially improved relative damaging energy, and is thus suitable for resisting damage from penetration due to the bones of bone-in meat products packaged with the films.

Applicants further demonstrated a nexus between a long-felt need in the packaging art and the superior properties of the presently claimed invention. Applicants' submission of factual evidence refutes the Office's assertion of obviousness and thus the rejection should be withdrawn.

Applicants submit that the evidence of record is supportive of the non-obviousness of the presently claimed invention. Applicants respectfully request withdrawal of the rejection.

The Declaration under 37 C.F.R. § 1.132 further provides evidence that at the time the present application was filed, there existed a long-felt and unsatisfied need for a packaging film for bone-in meat products. The Declaration provides evidence in support of the Declarant's opinion including a comparison against a similar 5-layer film; physical property information; and published descriptions of conventional packaging problems.

Applicants further traverse the Office Action for the reasons below.

In paragraph No. 3 of the July 7 Office Action the Office asserts that the resistance to puncture by bony meat products is not reflected in the claims of the present application. There is no requirement under the patent laws or patent rules of the United States that unexpected results probative of the patentability of an invention must be recited in the claims. To the contrary, Applicants need only show that the claimed invention provides a non-obvious or unexpected result. As demonstrated by the data of the original specification and the Declaration of Dr. Hartmut Grund, Applicants have met their burden.

Irrespective of the above, Applicants draw the Office's attention to new independent Claim 26 which recites the superior damaging energy achievable with the claimed film (i.e., a minimum damaging energy of 10 J/mm).

In paragraph No. 2 on page 7 of the July 7 Office Action the Office appears to assert that the presently claimed invention is obvious because the cited art suggests including a certain layer to obtain improved seal strength. *Arguendo*, even if the Office is correct in this

regard, the cited art nowhere suggests or discloses that superior damaging energy may be obtained from a tubular film having the layer structure recited in the present claims. As discussed above, there is no disclosure or suggestion in the cited art that improved damaging energy may be obtained in a tubular film having the layer structure recited in the present claims.

Applicants have provided objective evidence in support of patentability and in rebuttal to the Office's assertion of obviousness. The rejection should therefore be withdrawn. For the reasons discussed above in detail, Applicants request withdrawal of the rejection and the allowance of all now-pending claims.

Respectfully submitted,

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